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JW**AMENDMENT TRANSMITTAL****PATENT**

Application No.: 09/904,010
Filing Date: 07/11/2001
First Named Inventor: Bruce K. Martin, Jr., et al.
Examiner's Name: Abrishamkar, Kaveh
Art Unit: 2131
Attorney Docket No.: 3399P042

- ☒ An Amendment After Final Action (37 CFR 1.116) is attached and applicant(s) request expedited action.
- ☒ Charge any fee not covered by any check submitted to Deposit Account No. 02-2666.
- ☒ Applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 CFR 1.16 and 1.17, for any concurrent or future reply to Deposit Account No. 02-2666.
- Applicant(s) claim small entity status (37 CFR 1.27).

ATTACHMENTS

- ☐ Preliminary Amendment
- ☐ Amendment/Response with respect to Office Action
- ☒ Amendment/Response After Final Action (37 CFR 1.116) (reminder: consider filing a Notice of Appeal)
- ☐ Notice of Appeal
- ☐ RCE (Request for Continued Examination)
- ☐ Supplemental Declaration
- ☐ Terminal Disclaimer (reminder: if executed by an attorney, the attorney must be properly of record)
- ☐ Information Disclosure Statement (IDS)
- ☐ Copies of IDS citations
- ☐ Petition for Extension of Time
- ☐ Fee Transmittal Document (that includes a fee calculation based on the type and number of claims)
- ☐ Cross-Reference to Related Application(s)
- ☐ Certified Copy of Priority Document
- ☐ Other: _____
- ☐ Other: _____
- ☐ Check(s)
- ☒ Postcard (Return Receipt)

SUBMITTED BY:

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DATE: August 18, 2005

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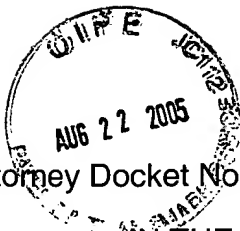
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Attorney Docket No.: 3399P042

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application for:

Bruce K. Martin, Jr., et al.

Serial No.: 09/904,010

Filing Date: July 11, 2001

For: METHOD AND APPARATUS FOR
DISTRIBUTING AUTHORIZATION
TO PROVISION MOBILE DEVICES
ON A WIRELESS NETWORK

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner: Abrishamkar, K.

Group Art Unit: 2131

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August 18, 2005

(Date of Deposit)

Harleen Bains

(Printed name)

(Signature)

August 18, 2005

(Date)

RESPONSE TO FINAL OFFICE ACTION

Dear Sir:

In response to the Final Office Action mailed on July 28, 2005, Applicants respectfully request reconsideration of the present application.

Applicants respectfully traverse the rejections in the initial and "final" Office Actions. Applicants maintain their arguments set forth in the remarks of their response filed on May 16, 2005, pages 4-8; those remarks are incorporated herein by reference.

Regarding the Examiner's comments in the Final Office Action, Applicants respectfully submit that the Examiner has not followed the applicable law regarding claim interpretation and, as a result, the Examiner has given certain claim terms an incorrect interpretation.

Regarding claim 1, for example, the Examiner disputes Applicants' argument that McConnell fails to disclose or suggest "provisioning", as the term is used in the present application. The Examiner relies upon an online dictionary definition provided by www.webopedia.com. Final Office Action, p. 2. However, the webopedia definition is inconsistent with the clear and unambiguous definition of "provisioning" provided in Applicants' specification (paragraph [0002]), which Applicants restated in their previous response (pp. 4-5).

An Examiner is not permitted to use extrinsic evidence, such as a dictionary definition, to contradict the meaning of a claim term that is unambiguous from the intrinsic evidence, such as the applicant's specification. *Phillips v. AWH Corp.*, 2005 U.S. App. LEXIS 13954, *58 (Fed. Cir. July 12, 2005) (citing and affirming *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Usually the applicant's specification is *dispositive* of the meaning of a disputed claim term, and it is the "single best guide to the meaning of a disputed claim term." *Id.* at *29 (citing *Vitronics*, 90 F.3d at 1582). "[C]laims must be construed to be consistent with the specification, of which they are a part." *Id.* at *33 (citing *Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003)).

Furthermore, to the extent the Examiner might contend that Applicant's definition of "provisioning" is inconsistent with the generally understood meaning (which it is not), Applicants' definition governs. See *Id.* at *34. The applicant is entitled to be his own lexicographer. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Furthermore, the definition of a term in the specification does not have to be an express definition. *Id.* at *47-48.

In view of these principles, Applicants maintain their argument that McConnell fails to disclose or suggest provisioning and each of the other arguments set forth in Applicants' previous response.

Furthermore, regarding independent claims 40, 44, 48 and 52, Applicants stated, in their previous response:

[T]he cited combination of art does not disclose or suggest any functionality in a mobile device, by which the mobile device is initially provisioned by a first trusted provisioning domain (TPD) to enable it to be subsequently provisioned by a second TPD. Further, as to claims 44 and 52, the cited art does not disclose or suggest the ability of a mobile device to distinguish between a message from a primary TPD and a message from a secondary TPD. Response filed 5/16/05, p.p. 7-8.

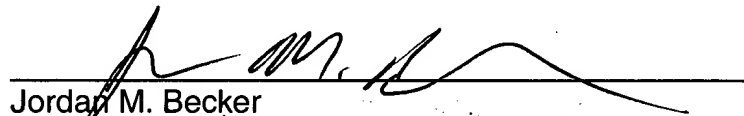
The Examiner responded to this in the Final Office Action by stating, "The Examiner does not see a limitation which states that a mobile device has the ability to distinguish between a message from a primary TPD and a message from a secondary TPD." Final Office Action, p. 3. Applicants respectfully submit that their above-quoted remarks were *paraphrasing* certain language in claims 44 and 52; the Examiner took Applicants' remarks too literally. Nonetheless, independent claims 44 and 52 clearly do, *in effect*, recite the ability of a mobile device to *distinguish between* a message from a primary TPD and a message from a secondary TPD. This ability is inherently recited in the combination of claim limitations that begin with the phrase, "if the remote source is" But regardless of whether or not the Examiner agrees with Applicant's choice of paraphrasing, the cited art does not disclose or suggest these features of claims 44 and 52.

For the above reasons, Applicants maintain their arguments set forth in their previous response, filed on May 16, 2005, and request withdrawal of the rejections. All claims in the present application are believed to be patentably distinguishable from the cited art. As such, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If any additional fee is required, please charge Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: August 18, 2005



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